

North Smithfield Zoning Board of Review

Meeting Minutes of November 6, 2007

The North Smithfield Zoning Board of Review met on Tuesday, November 6, 2007, at 7:00 PM at Kendall Dean School, 83 Greene Street, Slatersville, RI 02876.

Call to Order: The Chair called the meeting to order at 7:05 pm.

I. Call of the Roll

Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, Steven Scarpelli, Guy Denizard, William Juhr, and Dean Naylor. Absent: Mario DiNunzio. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.

The Chair reviewed procedures of the board for all present.

II. Approval of Minutes – September 18, 2007

The Chair stated that the approval of the minutes had been previously tabled, because some members of the Board felt that they did not accurately reflect the portion of the meeting dealing with enforcement of zoning decisions. The Chair had been in touch with Allied Court

reporters about ordering a transcript of that portion of the meeting. The estimated price is \$100-\$150. Mr. Benoit stated he does not have money in the budget for this. Mr. Juhr made a motion to table this agenda item and discuss it later in the meeting, during the discussion under agenda item VII. Mr. Marcantonio seconded the motion, with all in favor.

III. Continued application of The Homestead Group, requesting Special Use Permits, for flea market (outdoor retail sales in an open lot) per section 5.4.7 (20), attached dwelling for owner or operator per section 5.4.2 (5), and entertainment, performances, theatrical productions, wedding receptions, and parties per section 5.4.4 (18). Locus is 200 Industrial Drive, Plat 5, Lot 300.

Cheryl Custer and Michael Worthen from the Homestead Group were present for the applicant. The Chair stated that the Board had been waiting to review the Planning Board's recommendation on the application before making a decision. Mr. Juhr asked if the Board could vote on each of the several requested uses separately. Mr. Rossi stated that this would be appropriate.

The Chair made a motion to approve the special use permit for flea markets per section 5.4.7 (20). There was no second from the Board.

The Chair made a motion to approve the special use permit for the attached dwelling for owner or operator, per section 5.4.2 (5). Mr.

**Scarpelli seconded the motion. Zoning Board vote was as follows:
AYE: Mr. Juhr, Mr. Marcantonio, Chair Mr. Kearns, Mr. Scarpelli, Mr. Denizard. Motion passed, with a vote of 5-0. Special Use Permit was granted.**

The Chair made a motion to approve the special use permit for entertainment, performances, theatrical productions, wedding receptions, and parties, per section 5.4.4 (18). Mr. Marcantonio seconded the motion. Mr. Denizard asked that entertainment be defined specifically. Mr. Juhr stated that he has no problem with the present proposed use by the Homestead Group, but because the special use permit is granted in perpetuity for the property, not the applicant or current owner, he would like to be sure that the use is limited to forms of entertainment approved by the Board. He asked if the Board could have an itemized list of the entertainment that will be allowed, as well as a list of what will not be allowed on the property. Mr. Rossi advised to focus first on what will be allowed, then work on any exclusionary stipulations.

The Chair amended his motion to include the following approved activities, in addition to those stated in the original motion:

- 1) family day activities**
- 2) Christmas holiday season activities, including lighting display and Santa Claus**
- 3) training facility, mini-conference/meeting place for local businesses**

- 4) coffee house with entertainment (acoustic instruments and food served)**
- 5) dinner theater**
- 6) children's performances**
- 7) magic shows**
- 8) birthday parties**
- 9) anniversary parties**
- 10) Halloween events (parties, costume contest) to be held both in and outdoors**
- 11) hayrides**
- 12) Native American powwows, including traditional native dancing, music, food, and selling of wares**

The Chair added the stipulation that consumption, sale, and transporting to the property of alcoholic beverages is prohibited.

The Chair amended the list of approved activities to include 13) concerts related directly to approved activities. Mr. Marcantonio seconded the amendments and stipulations to the original motion. Mr. Marcantonio also asked that dances for individuals with special needs be included in the list of approved activities. Mr. Juhr stated that he feels this would be included under family day activities and does not have to be limited to individuals with special needs. Mr. Naylor asked Mr. Rossi if the Board could vote line by line on each activity. Mr. Rossi stated that the Board should vote on the motion as made by the Chair.

Zoning Board vote was as follows: AYE: Mr. Jühr, Mr. Marcantonio, Mr. Scarpelli, Mr. Denizard, Chair Mr. Kearns. Motion passed, with a vote of 5-0. Special Use Permit was granted.

Mr. Rossi asked the Board to take action on the request for a special use permit for flea markets. The Chair's motion to approve the application was not seconded. Mr. Denizard made a motion to deny the special use permit for flea markets per section 5.4.7 (20). Mr. Marcantonio seconded the motion. Zoning Board vote was as follows: AYE: Mr. Jühr, Mr. Marcantonio, Mr. Scarpelli, Mr. Denizard. NO: Chair Mr. Kearns. Motion passed, with a vote of 4-1. Special Use Permit was denied.

Mr. Worthen asked the Board why they denied the special use permit for flea markets. Mr. Jühr stated that they had not presented enough information on this aspect of the application. The Board felt that a flea market would involve various vendors selling possibly stolen or pirated goods. Mr. Worthen stated that the applicant's intention was for an upscale collector's antique fair. Mr. Rossi advised Mr. Worthen that the appeal process may begin after the written decision is issued.

IV. Ratification of the written decision granting the applicant Susan Guerard a Special Use Permit for a two family dwelling per section 5.4.2(3), also a dimensional variance, per section 5.5, subsection

5.5.1. Locus is 348 Iron Mine Hill Road, Plat 17, Lot 48.

Mr. Marcantonio made a motion to approve the written decision granting Susan Guerard a Special Use Permit for a two family dwelling per section 5.4.2(3), also a dimensional variance, per section 5.5, subsection 5.5.1. Mr. Scarpelli seconded the motion, with all in favor.

V. Ratification of the written decision granting the applicant Glen & Marjorie Andreoni, a special use permit under section 4, subsection 4.1(D) of the zoning ordinance to expand and enlarge onto a “preexisting, non-conforming” residential structure. Locus is Cranberry Lane, Plat 16, Lot 81.

Mr. Scarpelli made a motion to approve the written decision granting Glen & Marjorie Andreoni, a special use permit under section 4, subsection 4.1(D) of the zoning ordinance to expand and enlarge onto a “preexisting, non-conforming” residential structure. Mr. Marcantonio seconded the motion, with all in favor.

VI. Selection of member to the Zoning Ordinance Review Committee

Mr. Jühr nominated Mr. Marcantonio to serve as the Zoning Board’s representative on the town’s Zoning Ordinance Review Committee. All members voted in favor of the nomination.

The Chair informed the Board that after the written agenda had been sent to the Board, the Zoning Official had received a request from Bucci Development to change the wording to decisions made by prior boards. There are some discrepancies in the lot numbers between the application and the written decision. The Chair was called by a citizen of the town that this request was on the meeting agenda posted on the Secretary of State's website. Attorney Matthew Shaw is present to submit documentation and the request will be heard at the next meeting. Mr. Juhr stated that he was under the impression that the Chair sets the meeting agenda and wanted to know why there was a different agenda posted on the website. The Chair stated that the legal requirement is to post hearing notices for applications of variances and special use permits. The full agenda is not posted. The Chair added that this will change, and in the future, the full agenda will be posted.

Mr. Juhr asked about the process of posting meeting agendas and the chain of command. The Chair stated that the Building Official receives the applications, then gives the information to the clerk, who sends certified mailings, posts legal advertisements in the newspaper, on the state website, and in town offices. The Chair creates a full meeting agenda prior to the minutes that includes both the legal applications and other business, such as approval of minutes and ratification of written decisions. He stated that in the future, the legal hearings will be posted when scheduled, and then the full agenda will be posted 48 hours prior to the meeting. Mr. Juhr

suggested that the Building Official gives the applications to the Chair, who will then pass the information on to the clerk. Mr. Jühr feels that this will cause less of a chance for mistakes. Mr. Rossi stated that the Chair will be contacted for final approval in the future, but that applications for special use permits and variances must be properly noticed through the Zoning Official, and the other items can be added to the agenda by the Chair closer to the meeting date. The Chair stated that in the past, only legal items have been posted, the full agenda has only been written since Mr. Rossi advised the Chair to make one for each meeting. That is the reason for the discrepancy between the website notice and the meeting agenda received by the Board.

The Chair stated that Mr. Shaw was present to submit information and give an overview of his client's request. Mr. Jühr stated that he wished to remind the Chair that the Board's consent is required to place this item on the agenda. The Chair made a motion to hear information regarding the request of Bucci Development to correct errors in the decisions of November 9, 2004 and January 18, 2005. The motion was not seconded by the Board.

VII. Discussion of Zoning Board Rule change to require applicants to pay for transcripts of hearings.

The Chair stated that some jurisdictions in the state require the applicants to pay for a portion of the transcript of the meeting that

relates to their application. Mr. Jühr had stated that he would like to see if this Board could require something similar for applicants. Mr. Jühr stated that the clerk has a task of trying to record meetings, as accurately as possible, but with a limited number of tapes, all the information cannot be saved for a long period of time. The Chair stated that the clerk has been asked to get enough tapes to keep 5 months of backlog for meetings. Mr. Jühr stated that there is no tape to review the September 18, 2007 meeting. He stated that by law a stenographer is present at all meetings to record the meeting. He asked why the stenographer's transcript could not be made the minutes of the meeting. He added that it wouldn't cost the town more money if the applicants pay for the transcript.

The Chair asked the stenographer how much a transcript cost. She replied that she believes it is approximately \$4-5 per page. A typical 3-hour meeting would be about 100-120 pages long. The Chair stated that he felt that would be an extra burden on the applicant. Mr. Jühr stated that he would rather have accurate minutes of the meetings. He feels it is more important to get a transcript than an inaccurate summary of one person's point of view of what happened at the meeting. The Chair stated that he would not be happy getting an electronic version of a 120-page document to review after each meeting. Mr. Jühr suggested that the clerk use the transcript to write the minutes, then if the minutes do not include enough detail, the Board will have the transcript to fall back upon. The Chair asked Mr. Jühr to clarify that the transcript would not be the substitution for the

minutes. Mr. Juhr stated that the transcript would be the substitution for the tapes.

Mr. Rossi stated that there will still be a cost to the town, because, assuming that the Town Council approves the rules change, there are parts of the meeting that do not pertain to an application. The portion of the meeting that is requested by the Board for the September 18, 2007 meeting was a discussion of enforcement of zoning decisions, not part of a hearing on an application. Mr. Juhr suggested that the cost of the transcript be divided by the number of applicants at a meeting. The Chair stated that he did not feel that would be a fair way of doing it. He feels that the town would have to pay for the portion of the remainder of the transcript, which he estimated would be less than \$100 per meeting.

Mr. Juhr made a motion to request that the Town Council pay for the portion of the September 18, 2007 meeting which deals with enforcement of zoning decisions, estimated at between \$100-\$150. Mr. Marcantonio seconded the motion, with all in favor. Motion passed, 5-0.

The Chair made a motion to authorize the chair to communicate the Board's request for a rules change to the Town Council and ask that it be placed on the Town Council's agenda. Mr. Marcantonio seconded the motion, with all in favor. Motion passed, 5-0.

The Chair asked Mr. Rossi if they should draft a rule change to present to the Town Council. Mr. Rossi stated that he could draft something to present to the Town Council and ask them to approve it as an amendment to the ordinance. Mr. Marcantonio suggested forming a committee to work with Mr. Benoit to discuss current charges for a zoning application, as well as what charges would be added under the proposed rules change. Mr. Rossi stated that a committee meeting may violate open meetings laws and suggested the Board advertise the discussion as an open Board workshop. The Chair asked the Board to communicate their concerns and email him a list of items before the next meeting. Mr. Juhr asked the Chair to clarify why the Board does not have fees to order a \$100-\$150 transcript. The Chair stated that ordering transcripts is not an approved expense if not related to a legal appeal. Mr. Benoit added that the Board has a limited budget, which is used for advertising, the court stenographer, and the clerk. The amount has been increased in the past, but at this point, it is about where it should be to operate for the year without incurring additional expenses. He also mentioned that the cost of certified mailing has increased, so they might want to talk about having the applicants pay for the certified mail.

Mr. Naylor made a motion to adjourn at 8:40 p.m., seconded by Mr. Denizard, with all in favor.

Respectfully submitted,
Angela Pugliese, Clerk